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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

12 | VIESTE, LLC, ET AL.,

No. C-09-04024 JSW (DMR)

13 || Plaintiffs,

**ORDER GRANTING MOTION FOR  
PROTECTIVE ORDER AND  
GRANTING MOTION FOR  
DECLARATIONS RE DOCUMENT  
PRESERVATION AND COLLECTION  
EFFORTS**

14 || v.

15 HILL REDWOOD DEVELOPMENT, ET AL.,

## Defendants

18 On January 20, 2011, the parties submitted letter briefs regarding Plaintiffs' motion for  
19 declarations regarding Defendants' document preservation and collection efforts. *See* Docket Nos.  
20 173 & 174. On February 1, 2011, the parties submitted a joint letter brief regarding Defendants  
21 motion for a protective order regarding the deposition of Jose Manuel Albaldejo Canedo-Arguelles.  
22 *See* Docket No. 179. The Court conducted a telephonic hearing on both matters on February 3,  
23 2011, during which the parties were given an opportunity to present their arguments. This Order  
24 summarizes the rulings made by the Court on the record during the February 3, 2011 hearing.

25 The Court finds that the witness, Mr. Canedo-Arguelles, is not a managing agent of  
26 Defendants' and therefore Defendants' motion for a protective order is GRANTED.

27 Plaintiffs' motion for declarations regarding Defendants' document preservation and  
28 collection efforts is GRANTED as follows: **by no later than February 14, 2011**, each individual

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1 defendant and a representative or representatives with percipient knowledge from each defendant  
2 entity and from ZAC Management<sup>1</sup> shall file and serve a **detailed declaration** addressing the  
3 following information:

- 4 1. when the individual or entity became aware of Plaintiffs' lawsuit and how  
5 notification occurred;
- 6 2. what steps were taken by the individual or entity to preserve potentially relevant  
7 evidence and when the steps were taken;
- 8 3. identify each person whose files were searched for relevant evidence, and for each  
9 person, describe the types of relevant records in that person's possession (i.e.  
10 emails/electronically-stored information, hard copies of documents, etc.) and how the  
11 files are or were organized, stored, and maintained;
- 12 4. for each person whose files were searched for relevant evidence, describe the  
13 approximate number or size of relevant records;
- 14 5. what steps were taken by the individual or entity to gather documents responsive to  
15 discovery requests and when the steps were taken;
- 16 6. describe in detail the individual or entity's standard record retention/destruction  
17 policy(ies) and whether the policy(ies) was followed during the pendency of this  
18 litigation; and
- 19 7. describe in detail (what, how and why) any intentional or unintentional information  
20 destruction (including Defendant RCA's "server crash" in 2009) that took place from  
21 July 2008 to the present and any efforts expended to recover that destroyed  
22 information.

23 IT IS SO ORDERED.

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26 <sup>1</sup> Even though ZAC Management is not an individual defendant in this matter, the Court includes  
27 ZAC Management in this Order because Defendants are on record as asserting that ZAC is an agent of  
Defendants'. See Docket No. 148, Defendants' Opposition to Motion to Compel at 11. This Order should  
not be construed as a ruling that ZAC Management is a legal "agent" of Defendants. However, for purposes  
28 of this motion, the Court finds that it is appropriate for Defendants to provide information about ZAC's  
document preservation and collection efforts in this case.

**United States District Court**

For the Northern District of California

1 Dated: February 4, 2011  
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